

655—4.8(17A,147,152,272C) Panel of specialists. The board may appoint a panel of nurses who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.

4.8(1) The executive director shall set the date, time, and location of the hearing and make proper notification to all parties.

4.8(2) The panel of specialists shall:

- a.* Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.
- b.* Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.
- c.* Receive opening statements from the parties.
- d.* Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.
- e.* Question the witnesses.
- f.* Receive closing statements from the parties.
- g.* Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

655—4.9(17A,147,152,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.10, 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to filing charges or the commencement of contested case proceedings. The executive director or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

655—4.10(17A,147,152,272C) Voluntary surrender. A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

655—4.11(17A,147,152,272C) Application for reinstatement. Any person whose license to practice nursing has been suspended, revoked or voluntarily surrendered by order of the board may apply for reinstatement. A request for reinstatement must be accomplished in accordance with the terms and conditions specified in the board's order and filed in conformance with these rules.

4.11(1) If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be filed until one year has elapsed from the date of the order. Persons who have failed to satisfy the terms and conditions imposed by the board shall not be entitled to reinstatement.

4.11(2) Proceedings for reinstatement shall be initiated by the respondent by making application for licensure reinstatement with the board. The application shall be docketed in the original case in which the license was revoked, suspended or voluntarily surrendered and shall be subject to the same rules of procedure as other contested cases before the board. The person filing the application for reinstatement shall immediately serve a copy upon the attorney for the state of Iowa and shall in the same manner serve any additional documents filed in connection with the application.

4.11(3) The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the applicant's assertion that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to: medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the applicant.

4.11(4) The executive director or an appointed designee shall review the application for reinstatement and determine if it conforms to the requirements imposed by these rules. Applications failing to comply with these requirements will be denied. Such denial shall be in writing, stating the grounds, and may be appealed to the board in compliance with the provisions of Iowa Code chapter 17A.

4.11(5) Applications not denied for failure to conform to the requirements imposed by these rules shall be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions may be imposed.

655—4.12(17A,147,152,272C) Licensee review committee. In accordance with the provisions of Iowa Code section 272C.3(1)“k,” the board shall appoint a licensee review committee for the purpose of evaluating and monitoring licensees who self-report physical or mental impairments. The committee shall be comprised of the executive director or designee, a representative with chemical dependency or mental health treatment experience, and a recovering nurse with at least five consecutive years of sobriety.

4.12(1) Eligibility for referral to the committee shall be determined by the executive director in accordance with the following criteria:

- a. The licensee must self-report the impairment.
- b. The licensee must submit an evaluation summary, diagnosis, or other evidence which supports a determination that an impairment exists.
- c. There must be no indication of practice-related problems.
- d. There must be no documented violation of law or board rules related to impairment-associated behaviors.
- e. There must be no record of prior board sanction for impairment-related problems.

4.12(2) The committee shall meet as necessary in order to interview potential participants, develop consensual agreements for new referrals, review licensee compliance, and determine eligibility for continued monitoring.

4.12(3) Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensed individual in writing.

4.12(4) The licensee must consent to the conditions proposed by the review committee in order to participate in this program.

4.12(5) Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for possible disciplinary action.

4.12(6) Information in possession of the licensee review committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6.

655—4.13(17A,147,152,272C) Contested case proceedings. Contested case proceedings before the board of nursing are held in accordance with the provisions of Iowa Code chapter 17A. The following rules apply to board activities initiated upon a determination of probable cause that result in the issuance of a notice of hearing. Any adverse agency action to limit or revoke the multistate licensure privilege granted under the provisions of the nurse licensure compact shall be conducted as a contested case proceeding.

655—4.14(17A,152E) Definitions. Except where otherwise specifically defined by law:

“*Adverse action*” means a home or remote state action.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

“*Home state*” means the party state, which is the nurse’s primary state of residence.

“*Home state action*” means any administrative, civil, equitable, or criminal action permitted by the home state’s laws which are imposed on a nurse by the home state’s licensing board or other authority, including actions against an individual’s license such as revocation, suspension, probation, or any other action which affects a nurse’s authorization to practice.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means, unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the chairperson of the board or designee.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board of nursing did not preside.

“*Remote state*” means a party state, other than the home state, where either of the following applies:

1. Where the patient is located at the time nursing care is provided.
2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing care is located.

“*Remote state action*” means either of the following:

1. Any administrative, civil, equitable, or criminal action permitted by a remote state’s laws which is imposed on a nurse by the remote state’s licensing board or other authority, including actions against an individual’s multistate licensure privilege to practice in the remote state.

2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

655—4.15(17A) Time requirements.

4.15(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.15(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

655—4.16(17A) Notice of hearing. The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

4.16(1) The date, time, and location of the hearing shall be set by the chairperson or the executive director. The licensee shall be notified at least 30 days prior to the scheduled hearing.

4.16(2) Notification shall be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the licensee cannot be located:

a. An affidavit shall be prepared outlining the measures taken to attempt service and shall become a part of the file when a notice cannot be delivered by personal service or certified mail return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the licensee. The newspaper will be selected by the executive director or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

655—4.17(17A) Presiding officer. Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6.

4.17(1) The chairperson of the board shall designate the presiding officer in accordance with the provisions of section 17A.11. For nondisciplinary proceedings, any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing.

4.17(2) The executive director may deny the request upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witness is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

h. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

4.17(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

4.17(4) All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.17(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

655—4.18(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

655—4.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

655—4.20(17A) Disqualification.

4.20(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.20(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation or the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 4.20(3) and 4.32(9).

4.20(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.20(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.34(17A).

655—4.21(17A) Consolidation—severance.

4.21(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.21(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

655—4.22(17A) Pleadings.

4.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.

4.22(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and laws relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney.

4.22(3) Answer. An answer may be filed within 20 days of service of the petition. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

655—4.23(17A) Service and filing of pleadings and other papers.

4.23(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.23(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.23(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

4.23(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.23(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.

(Date)

(Signature)

655—4.24(17A) Discovery.

4.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.24(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

655—4.25(17A,272C) Issuance of subpoenas in a contested case.

4.25(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas may be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm that the conditions described in subrule 4.3(1) have been satisfied prior to the issuance of the subpoena.

4.25(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other real evidence requested;
- f. The date, time and location for production or inspection and copying; and
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.25(3) Each subpoena shall contain, as applicable, the following:

- a. The caption of the case;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other real evidence the person is commanded to produce;

g. The date, time and location for production or inspection and copying;

h. The time within which the motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the executive director or designee;

j. The date of issuance;

k. A return of service.

4.25(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

4.25(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.25(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.25(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.25(8) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

655—4.26(17A) Motions.

4.26(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.26(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.26(3) The presiding officer may schedule oral argument on any motion.

4.26(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

655—4.27(17A) Prehearing conference.

4.27(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board office to all parties. For good cause the presiding officer may permit variances from this rule.

4.27(2) Each party shall bring to the prehearing conference:

- a.* A final list of witnesses the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names;
- b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them; and
- c.* Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.27(3) In addition to the requirements of subrule 4.27(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations on the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Enter into stipulations for waiver of any provision of law; and
- e.* Consider any additional matters which will expedite the hearing.

4.27(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

655—4.28(17A) Continuances. The executive director shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive director only in situations involving extenuating, extraordinary, or emergency circumstances.

655—4.29(17A) Hearing procedures.

4.29(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.29(2) All objections shall be timely made and stated on the record.

4.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.